



Comptroller General
of the United States

Washington, D.C. 20548

52477

Decision

Matter of: Border Maintenance Service, Inc.--
Reconsideration

File: B-252680.2

Date: July 20, 1993

Joan K. Florino, Esq., East & Barnhill, for the protester.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Request for reconsideration is denied where protester has not shown that our prior decision contained errors of fact or law, nor has it presented information not previously considered.

DECISION

Border Maintenance Services, Inc. requests reconsideration of our decision in Border Maintenance Servs., Inc., B-252680, Apr. 13, 1993, 93-1 CPD ¶ 319, in which we dismissed its protest of a specification contained in solicitation No. GS-07P-92-HTC-00500, issued by the General Services Administration (GSA) for custodial services at locations in Austin, Texas. The solicitation was issued on a sole-source basis under the Small Business Administration's (SBA) section 8(a) program, and the protester, a section 8(a) participant, argued that the specification overstated the agency's minimum needs.

We deny the request for reconsideration.

In its protest, Border stated that the solicitation included a specification which GSA has interpreted to require the contractor to carry workers' compensation insurance.¹ The protester contended that the specification only required contractors to comply with federal and state workers' compensation statutes, and that the applicable Texas law does

¹The protester did not provide our Office with the actual text of the provision at issue during the pendency of the protest.

not require contractors to carry state workers' compensation insurance. Consequently, Border argued that the specification, as interpreted by the agency, both overstated the agency's minimum needs and violated the Small Business Act's policy of allowing disadvantaged small business concerns the maximum practicable opportunity to participate in a federal procurement.

In our decision, we stated that our Office generally has no jurisdiction to review SBA's stewardship of the small disadvantaged business contracting program. Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes SBA to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. This is a contracting approach which in general is not subject to the competitive and procedural requirements of the procurement regulations and the statutory provisions they implement. Arawak Consulting Corp., 59 Comp. Gen. 522 (1980), 80-1 CPD ¶ 404; Cassidy Cleaning, Inc., B-218641, June 24, 1985, 85-1 CPD ¶ 717. Because of the broad discretion afforded SBA and the contracting agencies under the applicable statutes and regulations, our review of actions under the section 8(a) program generally is limited to determining whether government officials have violated regulations or engaged in fraud or bad faith. See 4 C.F.R. § 21.3(m)(4) (1993); Lecher Constr.--Recon., B-237964.2, Jan. 29, 1990, 90-1 CPD ¶ 127.


We dismissed the protest because we concluded that the determination of the propriety of one of the terms and conditions of the proposed contract was properly left to SBA and GSA. We explained that, under the 8(a) program, once SBA certifies to an agency that it is competent and responsible to perform a specific contract, the contracting officer is authorized to award the contract to SBA based on terms and conditions mutually agreed to by those two parties. Federal Acquisition Regulation (FAR) § 19.800(c). Since negotiating the terms and conditions of a proposed section 8(a) contract on behalf of the proposed subcontractor is clearly left to SBA, our Office will not consider a protest of the propriety of such terms and conditions.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision may contain either errors of fact or law, or present information not previously considered which warrants reconsideration of the decision. 4 C.F.R. § 21.12(a). A party's mere disagreement with the decision does not meet this standard. See R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

In its request for reconsideration, Border contends that we should not adopt a "hands off" approach to this issue because GSA, not SBA, is insisting upon the inclusion of this requirement; Border states that the local district office of SBA "fully and completely supports" Border in its endeavor to bring GSA's requirement for workers' compensation in line with the laws of Texas. Border argues that we should consider its protest because our jurisdiction extends to protests of alleged solicitation improprieties in solicitations issued by GSA.

Border misunderstands the section 8(a) contracting approach. As we explained in our decision, a section 8(a) contract is awarded by the contracting agency, in this case GSA, to SBA based on terms and conditions mutually agreed to by the contracting agency and SBA. See FAR § 19.800(c). Under a section 8(a) contract, the socially and economically disadvantaged small business concern, in this case Border, is the subcontractor to SBA. As a result, Border's complaint is properly lodged not with our Office, but with the contractor, SBA, which is responsible for negotiating the terms and conditions of the prime contract. Border suggests that SBA agrees with the protester but is unable to dissuade GSA from its inclusion of the specification at issue. However, in a sole-source procurement like this one, once SBA accepts the offer in support of an identified participant, SBA is to participate directly in the contract negotiations and is ultimately responsible for approving the resulting contract before award. FAR § 19.808-1. As a result, whether or not SBA and GSA can come to an agreement on the terms and conditions to be included in the proposed contract is a matter that we will not review.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel